

REMARKS

Reconsideration of the present application in view of the following remarks is respectfully requested.

Status of the Claims

Claims 12-17, 19-21 and 32 are presented. No claims are amended. No claims are cancelled. No new claims are added.

Summary of the Invention as Claimed

The pending claims are directed to methods of treating skin damaged by UV-A and/or -B radiation. The methods comprise applying to the damaged skin a composition comprising : (a) a pulp extract from the *Argania spinosa* fruit; and (b) at least one dermatopharmaceutical auxiliary and/or additive. In certain preferred embodiments (see claim 19) the extract of the method is selected from the group consisting of a non-saponifiable fraction, a triterpene fraction, lupeol, alpha- amyrine, beta-amyryne, taraxasterol and psi-taraxasterol.

Rejections under 35 U.S.C. § 103(a)

Claims 12-17, 19, 21 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Charrouf et al. (*Plantes Medicinales et Phytotherapie* 25 (203), 112-119, 1991, "Charrouf") in view of Fabre et al. (FR 2724663A1; "Fabre"), further in view of Charrouf et al. (EP 1213025 A1; '025). Applicants respectfully traverse the Examiner's rejection.

Charrouf discloses the identity of some of the major components of the unsaponifiable fraction of the hexane extract of the fruit pulp of *Argania spinosa* (Argan). No specific utility for this pulp extract is reported, although the introduction mentions that Argan oil, derived from the **seeds** (cf. Wikipedia article on Argan oil, http://en.wikipedia.org/wiki/Argan_oil), has been used in traditional medicine.

Fabre discloses a process for enriching Argan oil, again from the **seeds**, and that this oil has utility in preventing skin from aging and drying out.

EP-'025 discloses extracts of Argania spinosa **leaves**, and cosmetic or dermatological preparations for skin and/or hair care. These **leaf** extracts are described as being active as sunscreens, and are cited as effective in a whole host of utilities, including aintinflammatory, antimicrobial, antioxidant, protease-inhibiting, antibacterial, anti-ageing, and for treating sensitive or allergy-affected skin.

None of these references describe a utility for an extract of the **fruit pulp** of Argania spinosa. As recited in Applicants' specification, page 8, lines 4-11,

"The use of the extract of the pulp of the fruit of Argania spinosa for cosmetic or pharmaceutical purposes is surprising and not obvious to the skilled artisan because to date the pulp of the fruit of Argania spinosa has been regarded and used only as a by-product of the fruit of low value. Up to now the oleaginous seeds have been used to produce oil for food or for cosmetic purposes. The pulp has been discarded or it has been used to feed cattle. The present invention provides for a use of the pulp of much higher value. Thus the use of the pulp for high value purposes like cosmetic and pharmaceutical applications means to recycle waste for high value applications."

Thus, the utility of a pulp extract is absent from the art, and there is certainly no suggestion to use the extract from the **pulp** to treat **damaged** skin.

Notwithstanding the absence any such teaching from the prior art, the Examiner states that "[i]t would have been prima facie obvious for one of ordinary skill in the art at the time the invention was made to use the extract of the plant Argania spinosa to treat skin damage by UV-A and/or UV-B radiation since Charrouf et al (EP 1213025 A1) teach that the extract of the plant Argania spinosa has sunscreen action especially against UV-A and/or UV-B radiation." The undersigned respectfully traverses the Examiner's rejection in this regard for at least two reasons.

First, the rejection is improper to the extent that it ignores an important requirement of the claims that are now pending. The claims are directed to methods which utilize a composition containing an extract from the **pulp** of the plant. The

Examiner's rejection is improper because it ignores this limitation in the claims. The undersigned respectfully submits that the Examiner has ignored this limitation for the very reason that there is no hint or suggestion of it in the prior art.

The second flaw in the Examiner's reasoning is that he incorrectly equates sunscreen utility with damaged skin treatment utility. The ability of a material to **protect** skin from damage by shielding the skin from the sun has nothing to do with and is now way predictive of the ability of that material to **treat** the skin once it has been damaged by the sun. Since the claimed methods are limited to the treatment of damaged skin, there is certainly no suggestion to use any material for the treatment of damaged skin, much less the use of the extract of the **pulp**, as opposed to seed extract, to treat damaged skin.

The Examiner has also rejected claims 12-17, 19-21 and 32 were under 35 U.S.C. § 103(a) as being unpatentable over Charrouf, Fabre and '025, further in view of Martin et al. (UV 6,616,936; "Martin"). Applicants respectfully submit, however, that there is nothing in Martin which overcomes any of the substantial deficiencies in the Examiner's rejection as discussed above.

Conclusion

The present claims define subject matter which is novel and patentably unobvious over the cited items, and applicants respectfully request an early notice of allowance.

Respectfully submitted,

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